**In The**
**Supreme Court Of The United States**

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October Term 1952
Misc. Nc

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ATLANTIC COAST LINE RAILROAD COMPANY,
*Petitioner,*

***versus***

WILLIAM C. CHANCE,
*Respondent.*

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**RESPONDENT'S BRIEF IN OPPOSITION TO THE GRANTING OF A WRIT OF CERTIORARI**

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Respondent, William C. Chance, files this brief in opposition to the granting of a writ of certiorari sought herein by the Atlantic Coast Line Railroad Company to the judgment of the United States Court of Appeals for the Fourth Circuit entered on July 18, 1952.

## PRELIMINARY STATEMENT

The statement of facts as set out in the petitioner's "Summary Statement of the Matter Involved" is substantially correct.

made of the passenger's journey in Richmond other than the necessary delay while the locomotive and employees were being changed, except the additional delay, interruption, hindrance and discomfort occasioned by petitioner railroad company requiring all through passengers to be moved to another coach or another part of the train solely because of their race and color, even though such passengers were traveling in interstate commerce, when such passengers happened to be in a coach which was assigned by the rules and regulations of the company to passengers of another race. In this particular case, this respondent was first assigned to the coach in which he was riding by railroad employees and was later repeatedly requested to move to another coach by agents of petitioner solely because of his race.

"The warrant under which respondent was arrested showed on its face that it was obtained and sworn to by the conductor, an employee of the railroad company, and subsequently at his instance and request, it was dismissed."

As conclusive proof of the burden on interstate commerce is the fact that during this entire trip petitioner's train had five day coaches, five pullman cars and one diner and that no persons were segregated in either the pullman or the diner; that only those persons unfortunate enough to be seated in the day coaches were discriminated against and segregated (petition pages 3, 5); and that only those persons were segregated after they had traveled approximately one hundred miles in Virginia.

**(b) Respondent Violated No Law by Refusing to be Segregated.**

Petitioner apparently has misconstrued the entire law as enunciated by this Court and various Courts of Appeals as

to the rights, duties and liabilities of common carriers relative to their inability to segregate or discriminate against persons traveling in interstate commerce on account of their race.

The sole prayer in petitioner's petition for a writ of certiorari is that this Court reverse the judgment of the Court of Appeals for the Fourth Circuit and "that this case be remanded to it with direction that it consider and pass upon the question whether the respondent was guilty of a misdemeanor under the law and decisions of the Courts of Virginia." That question was not raised either in the question presented in the petition or in the reasons relied upon for allowance of the writ. Actually the petitioner's petition in this matter is conflicting in that in the last paragraph of its "Summary Statement of the Matter Involved" it states a position exactly contrary to the prayer of its petition. On page 10 of its petition, petitioner makes this statement:

> "We do not in this petition raise before this, the Supreme Court, the question whether under the law of Virginia a passenger who violates a reasonable rule and regulation of a carrier is guilty of a misdemeanor. We do not raise it for two reasons; first, it is a question which does not involve the Federal Constitution or Federal law; second, it has not as yet been passed upon by the Court of Appeals. Hence we raise only the one question now to be stated."

Which question was as to whether the rule or regulation of the carrier violated the Commerce Clause of the Constitution.

In fact that question was presented to the Court of Appeals in both appeals as well as to this Court and has definitely been settled and decided in a unanimous opinion

of the Supreme Court of Appeals of Virginia in *Taylor* v. *Commonwealth*, 187 Va. 214 (1948). In that case the Court held that the statute "does not make the mere refusal of a person 'to move to another seat when lawfully requested to so move by the operator,' a criminal offense. It does not provide for the racial segregation of passengers on a public conveyance, with a penalty for non-conformity. It defines a separate and distinct crime—disorderly conduct—an offense, arising from personal misconduct and misbehavior as distinguished from an offense arising out of the violation of a segregation statute.

"Admittedly, the request of the driver of the bus that the defendant move her seat was based on a rule of the carrier and not on any provision of law. The refusal of the defendant to obey such request constituted, at most, a breach of the rules and regulations of the carrier. As such breach, it related only to the dealings and acts of private persons,—the defendant and the carrier.

"The General Assembly alone has power to define crimes against this Commonwealth. This power cannot be delegated to the courts, or to individuals, or corporations. Code, section 4533a does not purport to delegate any such authority to a common carrier.

*"While common carriers may adopt and enforce reasonable rules and regulations, independent of statutory authority, for the conduct and management of their business, they are wholly without power to provide that a violation thereof shall constitute an offense punishable by fine or imprisonment."*

As was stated in *Whiteside* v. *Southern Bus Lines, Inc.*, 177 Fed. (2d) 949, in a similar case involving segregation of an interstate passenger on a bus on account of race, the Court there stated as did the Court here: "We indicate no

view as to the reasonableness or necessity of the challenged regulation under conditions which exist in Kentucky nor as to its validity under state law when applied to local traffic. We hold that as here applied to a passenger traveling on an interstate journey upon an interstate conveyance, it constitutes a burden upon interstate commerce and furnishes no immunity to the appellee for damages which may flow from its enforcement." That is the crux of this case.

**(c) The Regulation Violates the Interstate Commerce Clause of the United States Constitution.**

In the three cases that have come before this Court in modern times the rule has been clearly enunciated that in interstate travel passengers on common carriers have a right to be treated as individuals, subject only to rules and regulations applicable to all of the traveling public, and such passengers are entitled to uniformity of traveling conditions.

*Mitchell* v. *United States*, 313 U. S. 80.

*Morgan* v. *Virginia*, 328 U. S. 373.

*Henderson* v. *United States*, 339 U. S. 816.

Since this Court held that state statutes similar to these rules and regulations which require segregation of passengers on account of race were unconstitutional when applied to person traveling in interstate commerce, various United States Courts of Appeals have had no difficulty in holding that such rules and regulations were equally burdens on interstate commerce.

In all of the later cases the Courts, contrary to the contention of this petitioner, have held that similar rules and regulations were burdens upon interstate commerce and

the transportation companies were responsible for any damages flowing from the enforcement of the rule or regulation.

*Mattheces* v. *Southern Railway System*, 157 Fed. (2d) 609.

*Whiteside* v. *Southern Bus Lines, Inc.* 177 Fed. (2d) 949.

*Chance* v. *Atlantic Coast Line Railroad Company*, 186 Fed. (2d) 879.

*Atlantic Coast Line Railroad Company* v. *Chance*, (Decided July 18, 1952, *per curiam* opinion not yet reported).

Three United States Courts of Appeals have recently held that actions of transportation companies similar to those engaged in by the petitioner in this case contravene the rights of colored citizens traveling upon common carriers in interstate commerce. *Chance* v. *Atlantic Coast Line Railroad Company, supra; Whiteside* v. *Southern Bus Lines, Inc., supra;* and *Mattheces* v. *Southern Railway System, supra.*

No Court has recently held to the contrary. No state or Federal law gives sanction to such. There is no important question raised in this case which has not already been clearly decided by this Court, the Supreme Court of Appeals of Virginia and by unanimous holdings of various United States Courts of Appeals since the decision of this Court in *Morgan* v. *Virginia*, 328 U. S. 373:

As was well said by an eminent Supreme Court Justice in an early case:

"The arbitrary separation of citizens, on the basis of

race,—, is a badge of servitude wholly inconsistent with the civil freedom and the equality before the law established by the constitution. It cannot be justified upon any legal grounds."

Justice Harlan, dissenting in *Plessy* v. *Ferguson*, 163 U. S. 537, 16 S. Ct. 1138 at 1147.

## CONCLUSION

It is therefore respectfully submitted that the writ of certiorari should be denied.

Oliver W. Hill,
Martin A. Martin,
Spottswood W. Robinson, III,
623 North Third Street,
Richmond 19, Virginia.
*Attorneys for Respondent.*